U. S. Army Homosexual Conduct Policy

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- Implements 10 U.S. Code § 654
- Implements DoD Policy, DoD Directives 1332.14; 1332.30
- AR 600-20, chapter 4-19
- Policy is a balance between the legal prohibition of homosexual conduct and the privacy rights of soldiers

What does the Law Say?

- “A member of the Armed Forces shall be separated if one of the following findings is made:
  - “the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts
  - “the member has stated that he or she is a homosexual or bisexual, or words to that effect
  - “the member has married or attempted to marry a person known to be of the same biological sex.”

What are the Limits on Inquires into Homosexual Conduct?”

- Applicants for enlistment will not be asked nor required to reveal their sexual orientation.
- Applicants for enlistment will not be asked if they have engaged in homosexual conduct.
- Only a soldier’s commander is authorized to initiate fact finding inquires involving homosexual conduct.
- A commander may initiate a fact-finding inquiry only when he or she has received

What Happens if a Soldier Tells Others that he/she is Homosexual or a Bisexual

- If a soldier makes a statement that he or she is a homosexual or bisexual, or makes other statements indicating a propensity to engage in homosexual acts, the soldier's commander may initiate an inquiry to determine whether that member should be discharged.
- Discharge is not required if it is determined that the soldier made the statement for the purpose of avoiding or terminating military service.

What is Credible Information that can Trigger a Fact-finding Inquiry?

- **A statement by a reliable person that a soldier has:**
  - engaged or solicited another to engage in a homosexual act or said that he/she is homosexual or bisexual
  - observed or heard the soldier Make any other statement that a reasonable person would believe was intended to convey that the soldier has a propensity to engage in homosexual acts
  - observed behavior by a soldier that amounts to a non-verbal statement that the soldier is homosexual or bisexual.

What Is Not Credible Information?

- Rumors, suspicious, or capricious claims that a soldier is homosexual
- Others opinions that a soldier is homosexual
- Going to a homosexual bar, reading homosexual publications, associating with known homosexuals or marching in homosexual rights rallies in civilian clothes
- Reports by a soldier of being harassed on the basis of perceived sexual

What are Grounds for a Fact-finding Inquiry?

- Credible information must exist.
- A commander must have a reasonable belief that a soldier has:
  - Engaged or solicited to engage in a homosexual act
  - Stated that he or she is a homosexual or otherwise indicated a propensity to engage in homosexual conduct
  - Married or attempted to marry a person of the same sex

Substantial Investigation

- The initiation of any ***substantial investigation*** into whether a soldier stated that he\she was homosexual or bisexual for the purpose of avoiding or terminating military service must be approved at the Army Secretariat level..
- Definition of substantial investigation: Any investigation that extends beyond questioning the member, individuals suggested by the member for interview and the member's immediate chain of command.

August 1999 Procedural Changes

- Judge Advocates will consult senior legal officers at a higher HQ prior to the initiation of an investigation.
- Initiation of substantial investigations into whether a soldier has stated that he\she is a homosexual for the purpose avoiding or terminating service requires approval at the secretarial level.
- The IG will inspect homosexual conduct policy training.

Zero Tolerance for Harassment

- **Definition:** Derogatory, abusive, threatening or annoying behavior directed toward an individual or group.
- **Possible types of harassment**
  - Verbal (on or off duty)
  - Jody calls regarding homosexuals
  - Derogatory, abusive, threatening or annoying language or references about homosexuals
  - Graffiti in latrines, bulletin boards, etc.
  - Anonymous threats; telephonic, electronic, etc.

Harassment

- All soldiers will be treated with dignity and respect and will be afforded a safe and secure environment in which to live and work.
- Harassment of soldiers for any reason, to include perceived or alleged homosexuality, will not be tolerated.
- Commanders at every level will take appropriate action to prevent harassment of or threats against any member of the Army.

What Can a Soldier Do If Threatened, Harassed or Accused of Being Homosexual?

- Report harassment at once to the commander
- Commanders will take appropriate action to protect the safety of soldiers who report threats or harassment.

Who Can a Soldier Talk with Confidentially?

- Legal Assistance Attorney
- Chaplain

Summary

The challenge to commanders is to enforce the statutory ban on homosexual conduct in the military while respecting the limits tat the policy places on investigations of such conduct.